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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,701	02/12/2004	J. Richard Braun	078146/2	5720

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EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/777,701

Applicant(s)

BRAUN, J. RICHARD

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 and 31-39 is/are pending in the application.
- 4a) Of the above claim(s) 7-10, 23-26 and 34-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 11-22, 27, 28 and 31-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/12/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of various species, especially the elected species I, in the reply filed on 5/20/05 is acknowledged. The traversal is on the ground(s) that all of the claims are directed to the same invention having one independent claim that includes limitations for a planter receptacle. This is not found persuasive because, clearly, from the specification and drawings there are multiple embodiments of the invention. If Applicant believes that these species are not distinct, then Applicant should submitted evidence or identified such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. Since Applicant did not provide such evidence, the requirement is still deemed proper and is therefore made FINAL. Claims 7-10,23-26 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected species of a planter receptacle. In addition, claims 34-39 have been withdrawn due to a non-elected invention as restricted in the restriction requirement mailed on 3/30/05.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-6,11-20,21,22,27,28,31-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1 & 17, it is

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unclear how flexible length is regarded as hanging means because flexible length is not a structural element.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-6,11,12,15-22,27,28,31-33** are rejected under 35 U.S.C. 103(a) as being unpatentable over Atsumi (JP 2004129629A) in view of Reed (6655083).

For claim 1, Atsumi teaches in fig. 11, a planter receptacle adapted to be mounted to a railing 16-19, comprising: a front wall (where ref. 24 is pointing at); a back wall (behind the support 17); first and second spaced-apart side walls (where ref. 16 is pointing at, for both left and right sides), wherein a) said front wall is connected to said first and second side walls; and b) said back wall is connected to said first and second side walls, forming an enclosure with said front wall, said back wall, and said first and second spaced-apart side walls. However, Atsumi lacks hanging means.

Reed teaches hanging means such as chain 19,15a,15b in her planter receptacle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the chain as taught by Reed in the planter receptacle of Atsumi in order to further secure the planter onto the railing or support.

For claim 2, Atsumi as modified by Reed (emphasis on Atsumi) further teaches a bottom wall (in phantom) underside of the front, back and side walls.

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For claims 3 & 4, Atsumi as modified by Reed (emphasis on Atsumi) further teaches stabilizing means comprises at least a first interior wall (where refs. 22,23 are pointing at) connected to said first and second spaced-apart side walls between said front wall and said back wall, creating a first enclosure 23 formed by said front wall, said first interior wall, and a portion of said first and second spaced-apart side walls, and a second enclosure (where ref. 17 fitted therethrough) formed by said first interior wall, said back wall, and a portion of said first and second spaced-apart side walls; wherein said first interior wall, said back wall, and said portion of said first and second spaced-apart side walls at least partially surround at least one support 17 of said railing when said planter receptacle is mounted to said railing. However, Atsumi as modified by Reed lacks the support being a baluster. Balusters are notoriously well known in the art for supporting objects such as planters or other objects, therefore, It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ balusters in the planter of Atsumi as modified by Reed for such supports are well known in the art to support planters or the like.

For claim 5, Atsumi as modified by Reed (emphasis on Atsumi) further teaches the first interior wall is substantially parallel to the back wall (see fig. 11, self explanatory).

For claim 6, Atsumi as modified by Reed (emphasis on Atsumi) further teaches a bottom wall, wherein said bottom wall forms at least a portion of the underside of said first enclosure formed by said front wall, said first interior wall, and a portion of said first and second spaced-apart side walls (see the phantom line).

For claims 11 & 12, in addition to the above, Reed further teaches connecting means 19,15a,15b attached to at least one of said walls 20c (see fig. 2) of the planter assembly, wherein said connecting means is vertically adjustable by shorting the chain. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the chain anchored to one of the wall of the planter as further taught by Reed in the planter receptacle of Atsumi in order to further secure the planter onto the railing or support.

For claim 15, Atsumi as modified by Reed (emphasis on Reed) further teaches wherein said hanging means is attachable to said railing.

For claim 16, Atsumi as modified by Reed (emphasis on Reed) further teaches wherein said hanging means enables said planter receptacle to be positioned at a variable height with respect to said railing.

For claim 17, in addition to the above limitation already discussed, Atsumi teaches a top rail (as shown in figs. 7-9, the top most support 17). The combination of Atsumi as modified by Reed teaches the rest of the limitation of this claim as discussed above.

For claim 18, see claim 2.

For claims 19 & 20, see claims 3 & 4.

For claim 21, see claim 5.

For claim 22, see claim 6.

For claims 27 & 28, see claims 11 & 12.

For claim 31, Atsumi as modified by Reed teaches wherein said hanging means is connected to said railing. Note, the chain of Reed has to attach to some sort of support, thus, in combination with Atsumi, which already teaches a railing as shown in figs. 7-9, it would be obvious to connect the hanging means to the railing for support.

For claim 32, Atsumi as modified by Reed lacks a rail cap and the hanging means is connected to the rail cap. It would have been obvious to one having ordinary skill in the art at the time the invention was made to connect the hanging means of Atsumi as modified by Reed to a rail cap, depending on the user's preference as to where to hang the planter receptacle.


For claim 33, see claim 16.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen
Primary Examiner
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stn